IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.6551 OF 1999

Arvind Maganlal Shah Plaintiff

versus

V.Hari Mohan and others Defendants

Mr.N.R.Patel for plaintiff.

None for defendant

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th July 2005

PC :

1. Learned advocate appearing for the plaintiff states that he is seeking a decree as against defendants 1, 3 and 4. He tenders affidavit proving service of writ of summons. The same is taken on record and marked "X" for identification. In the said affidavit, it is pointed out that the writ of summons has been served on defendants 1, 3 and 4 and they have acknowledged receipt thereof. Original documents along with list taken on record and marked "X-1" for identification.

2. The claim in the summary suit arises out of a written contract as evidenced by the purchase

orders, delivery challans and invoices under which the plaintiff sold, supplied and delivered goods which are referred to therein. It is pointed out that defendant no.1 made payment of Rs.10,000/- by cheque towards part payment of the invoice amount of Rs.65,951/-. Since the balance amount was not paid, a demand notice was addressed on 21nd November 1997 and 10th January 1998. All that has been pointed out to the plaintiff in reply to this demand notice is some internal dispute between the defendants. Plaintiff made independent demands on each one of them. It is his case that defendants are liable jointly and severally to pay the amounts under the invoices with interest. I am satisfied that claim in the suit is maintainable under provisions of Order XXXVII of CPC.. Further, it is not barred by limitation. There is no defence inasmuch as despite writ of summons being served, none has entered appearance. There is, thus, no dispute about the claim.

3. Accordingly, there will be a decree as prayed. Refund of court fees and computation of advocates costs as per rules. Drawing up of decree is expedited.

(S.C.DHARMADHIKARI, J.)